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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,993	06/08/2001	Isabelle Afriat	208593US0	8352
22850	7590	12/30/2005	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			WEBMAN, EDWARD J	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/875,993	<b>Applicant(s)</b> AFRIAT ET AL.	
	<b>Examiner</b> Edward J. Webman	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13-25 and 31-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-25 and 31-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/27/04</u> . | 6) <input type="checkbox"/> Other: _____  |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 19-24, 26, 32-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ribier et al (6,017,524).

Ribier et al '524 teach a dermatological composition comprising cubic gel particles reading on the claimed cubic gel particles (abstract, column 1 line 66-column 6 line 9). Antioxidants and anti-free radical agents are specified (column 6 lines 21-36).

Applicants stipulate pollutants such as ozone, carbon monoxide, nitrogen oxides and sulfur dioxides (page 1 lines 16-18), all of which are oxidizing agents. Additionally, applicants stipulate heavy metals as pollutants, which inhibit cellular defenses against free radicals (page 1 lines 21-25).

It would have been obvious to use the composition of Ribier et al '524 to protect keratin materials from pollutants in view of applicants' stipulation of the known action of such pollutants as oxidants and inhibitors of cellular defenses against free radicals. That is, it would have been obvious to one of ordinary skill, recognizing that pollutants contain oxidants and inhibitors of cellular defenses against free radicals, to use the Ribier et al '524 dermatological composition to protect keratin materials from such pollutants because the composition contains antioxidants and anti-free radical agents.

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Applicants argue that there is no intent in Ribier et al '524 to use the composition to treat pollution. However, applicants overlook their stipulation that pollutants contain oxidants and heavy metals that inhibit cellular defenses against free radicals. It is this knowledge that would motivate one of ordinary skill to use the Ribier et al '524 composition to protect keratin from pollution, because it contains agents that counteract oxidants and free radicals.

Claims 13-18, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biatry (US 6,506,391).

Biatry '391 teaches a dermatological composition comprising cubic gel particles reading on the claimed cubic gel particles (title, abstract, column 2 line 33-column 5 line 57). Antioxidants and anti-free radical agents are specified (column 6 lines 37-39).

Applicants stipulate pollutants such as ozone, carbon monoxide, nitrogen oxides and sulfur dioxides (page 1 lines 16-18), all of which are oxidizing agents. Additionally, applicants stipulate heavy metals as pollutants, which inhibit cellular defenses against free radicals (page 1 lines 21-25).


It would have been obvious to use the composition of Biatry '391 to protect keratin materials from pollutants in view of applicants' stipulation of the known action of such pollutants as oxidants and inhibitors of cellular defenses against free radicals. That is, it would have been obvious to one of ordinary skill, recognizing that pollutants contain oxidants and inhibitors of cellular defenses against free radicals, to use the Biatry '391 dermatological composition to protect keratin materials from such pollutants because the composition contains antioxidants and anti-free radical agents.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is 571-272-0633. The examiner can normally be reached on M-F from 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan, can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
EDWARD J. WEBMAN  
PRIMARY EXAMINER  
GROUP 1500